



<b><u>Decision Ref:</u></b>	2020-0230
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Credit Cards
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Upheld

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

This complaint concerns the administration of the Complainant's credit card account with the Provider.

**The Complainant's Case**

The Complainant held a credit card account with the Provider. She states that prior to March 2017 she paid the monthly amount due on her account with her laser card, over the telephone. She explains that in February 2017 she received a direct debit form from the Provider. This form outlined three options for payment of her credit card as follows:

1. An option to pay in full each month;
2. An option to pay a minimum amount each month; and
3. An option to pay a fixed sum each month.

The Complainant states that she completed the form and returned it to the Provider indicating her preference to pay a fixed amount on the 25<sup>th</sup> of each month of €150.

A few days later she received a letter from the Provider acknowledging receipt of her completed direct debit mandate and seeking confirmation of her IBAN. The Complainant states that she confirmed her IBAN straight away.

The Complainant submits that in March 2017 she did not make her usual monthly telephone call to pay the amount due on her account because she understood the direct debit had been set up. However, in April, when she noticed that monies had not been deducted from her paying account on foot of the direct debit, she contacted the Provider's customer service department.

The Complainant states that the representative she spoke with was unaware as to why the direct debit had not been set up but indicated that she would resolve the issue and ensure the direct debit instruction was actioned. The representative also agreed to refund any charges imposed for missed payments. A call back was arranged for later that day but no call was made by the Provider at that time.

The Complainant states that in May 2017 when she noticed that, once again, no payment had been deducted from her paying account, she contacted the Provider. The Complainant states that during this conversation, for the first time she was advised that as she is living in the Republic of Ireland, she would be unable to avail of the direct debit fixed payment option. The Complainant states that she was offered the option of paying a percentage of the outstanding amount or the full amount monthly. She requested to avail of the percentage option. The Complainant submits that she was led to believe that the direct debit had been set up. She emphasises that she was never told that she would be required to make a manual payment.

The Complainant states that, notwithstanding her instruction to deduct the percentage of the monthly balance owing on her account, and her completion of the necessary direct debit mandate, her credit card was ultimately cancelled as three months payments were recorded as having been missed. The Complainant points out that at no point was she told her card would be cancelled. Moreover, in June 2017 when she called the Provider, the representative she spoke with did not know the current status of her account and did not advise her it had, in fact, been cancelled.

The Complainant is extremely dissatisfied with the treatment she received and the manner in which the credit card was cancelled without any advance warning. She states that she completed the direct debit mandate as advised and chose the fixed payment option as this was an option offered to her. She was never told this option was exclusive to residents of the United Kingdom and was therefore not available to her as a resident in the Republic of Ireland. The Complainant points out that following the Provider's receipt of her completed mandate she was asked to confirm her IBAN, which she did. This would have been an opportunity for the Provider to clarify that she could not avail of the fixed payment option, however no such information was conveyed. There were also a number of other occasions when the Provider could have brought this important information to her attention, but failed to.

The Complainant is particularly upset over the Provider recording a negative credit rating for her and its refusal to remove the negative record from her Irish Credit Bureau (ICB) profile, given that she was at all times ready and willing and attempting to pay the amount due and owing.

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### **The Complaints for Adjudication**

The first complaint is that the Provider wrongfully failed to set up a direct debit payment method for the account, in accordance with her written instructions, which resulted in payments being missed and ultimately led to the card being cancelled.

The second complaint is that the Provider supplied the Complainant with a wholly inadequate level of customer service.

The third complaint is that the Provider wrongfully failed to amend the Complainant's ICB profile to reflect the fact that any missed payments to her credit card account were attributable to the Provider's conduct, and not the fault of the Complainant.

The Complainant would like any fees and charges for missed payments removed from her account, compensation, reinstatement of her card, correction of her ICB profile and an apology.

### **The Provider's Case**

The Provider has accepted that its service fell below acceptable standards in sending a direct debit form that included the fixed payment option, when that option was not available to the Complainant. It also accepts that it failed to call her back on 19 April 2017 as agreed, however it points out that the Complainant was called on 20 April 2017 and a voicemail was left for her. It has also apologised for not informing her during a phone call of 22 June 2017 that her account had been terminated (the previous day). For these failures and by way of goodwill gesture it has reduced the outstanding balance by on her credit card account by €250.00.

The Provider, however, submits that it is the Complainant's responsibility to ensure payments are made, and states that it sent her letters regarding the account on 2 March, 3, 5 and 24 April, and 5 May 2017, in addition to the monthly statements that issued. It notes that a default notice issued on 25 May 2017 and a final termination notification issued on 21 June 2017.

It has no record of any telephone contact from the Complainant from 1 February 2017 to 19 April 2017 or from 19 April 2017 to 22 June 2017, and notes that no payment was made to the account from 2 February 2017 to 29 November 2017.

The Provider has since sold the debt, in the amount of €763.55 to a third party.

## **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 10 June 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The Complainant opened this credit card account with the Provider on **17 October 2014**.

Monthly statements furnished to the Complainant advise that payment by direct debit is an option for the customer.

In **February 2017** the Complainant contacted the Provider to set up a direct debit, and sought the previous 12 months statements. She was advised that a fixed direct debit payment was one of the options available to her.

The Provider issued a direct debit form with a covering letter. While the Provider has since confirmed that the fixed payment direct debit option is not available to customers in the Republic of Ireland, both the covering letter and the direct debit instruction form, sent to the Complainant, included it as an option. The form has clearly been adapted for use in the Irish market (amounts are in Euro; the Provider's address is in Dublin; the recipient for the funds has an Irish identifier IE). However, the direct debit fixed payment option was not available to customers in the Republic of Ireland. Despite this the option for direct debit fixed amount payments was included in both the letter and the direct debit form issued to the Complainant.

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The Complainant returned the completed form instructing the Provider to take €150 on the 26<sup>th</sup> of each month by direct debit. This form was received by the Provider on **20 February 2017**.

There is a note in the Provider's investigation file stating that *"invalid bank details received on [form]"*. It is not clear whether this relates to the Complainant's bank details simply being incorrect, or is a broader reference to Irish customers not being able to avail of a fixed payment direct debit.

A generic "contact us" letter with no case specific information issued to the Complainant on **2 March 2017**. The Provider's file also states that unsuccessful attempts were made to contact the Complainant by telephone, and a message was left for her.

The March 2017 statement showed no payment had been made to the account.

On **19 April 2017**, the Complainant contacted the Provider to enquire as to the status of her direct debit, explaining that it did not appear to have been implemented despite having sent the mandate to the Provider over two months previously. She was informed that the direct debit had not been set up. The Provider's agent offered to send another direct debit mandate to the Complainant for her to complete. The Complainant was not advised that the fixed payment option was not available to her. She was advised that the direct debit mandate was received but the Provider's agent was unable to explain why it had not been implemented.

The Complainant raised a concern regarding the charges resulting from this issue, and was assured these would be refunded to her. The Provider's agent said she would call the Complainant back after 8pm. In the event, this call back did not occur.

Another "contact us" letter issued to the Complainant the following day (**20 April 2017**). On the same day, the Provider left a voice message for the Complainant asking her to call back.

The April and May 2017 statements showed no payment had been made to the account. On **25 May 2017** a default notice issued to the Complainant. A termination notice issued on **21 June 2017**.

The customer telephoned the Provider on **22 June 2017**. She explained that she had attempted to set up a direct debit but it had never been implemented, and she had not received a call back when promised (presumably referring to the call back promised for after 8pm on 19 April 2017). It was explained to the Complainant that fixed payments by direct debit were not available to customers in the Republic of Ireland. The Complainant asked for the contractual minimum repayment to be made instead. The Complainant was advised that this would be implemented but not in time for that month. Although a termination notice had issued the previous day, the Complainant was not informed of that on this call. The Complainant advised that she would call back the next day to make a manual payment. This did not occur.

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## **Analysis**

The terms and conditions applicable to this credit card contain the following provisions:

*“8. Ending the agreement*

*a. The agreement will continue until it is ended by either you or us. We may end the agreement straight away if [...] you seriously, or repeatedly, break these conditions...”*

Failure to make any payments to the credit card account for three successive months may, in the normal course, have entitled the Provider to issue its default notice as it did on 25 May 2017, and ultimately a termination notice, as it did on 21 June 2017.

However, I am in no doubt that the conduct of the Provider greatly contributed to the situation that caused the Complainant to be in default. The Complainant was strung along for a number of months by virtue of the Provider repeatedly furnishing her with incorrect information, both in phone calls and in written correspondence.

The Complainant had a responsibility to check her account statements and any other communications received from the provider. However, having done so, the information she was given when she contacted the Provider was incorrect and misleading.

The limit on the credit card was €1,000. The Complainant appears to have had a history of making small/minimum repayments to this card account (the total debit balance in 2017 was consistently around €1,000). She was perfectly entitled to make repayments in this manner. From **February 2017**, she proactively sought to set up direct debits for €150 per month.

The Complainant expresses her grave concern that the Provider has recorded a negative credit rating against her and refused to amend her ICB profile to reflect the fact that its conduct contributed to the missed payments on her credit card account.

The Consumer Protection Code 2012 (CPC) requires that a regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

*2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;*

*2.2 acts with due skill, care and diligence in the best interests of its customers;*

...

*2.6 makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer;*

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*2.8 corrects errors and handles complaints speedily, efficiently and fairly;*

*4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.*

*4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following: a) the urgency of the situation; and b) the time necessary for the consumer to absorb and react to the information provided.*

It is my view that the manner in which the Provider has dealt with the Complainant's credit card account falls short of what is required of it under the CPC.

The Provider accepts it failed to provide the Complainant with correct information regarding the direct debit options available to her. The Provider refunded €250 to the Complainant's credit card account as a goodwill gesture on **27 September 2017**, and apologised.

The Provider's failure to carry out the instructions of the Complainant and its failure to provide clear and accurate information to the Complainant over an extended period of time, was the major contributory factor to the difficulty she had in effecting repayments to her account. This ultimately resulted in the closure of her account and the associated negative credit rating.

Having a negative credit rating can have very serious consequences for an individual. The Complainant's credit rating was negatively affected by the situation that developed with her credit card account, due mainly to the conduct of the Provider.

Having contributed, through its conduct, to the difficulty the Complainant found herself in, I find the Provider's inflexibility and inability to accept the impact of its actions unreasonable. In particular, I find the Provider's unwillingness to amend the Complainant's credit record unreasonable. The Provider does not seem to comprehend or care about the impact that its conduct has had on the Complainant. I find the Provider's "goodwill" gesture of €250 to be wholly inadequate in all the circumstances of this complaint.

Therefore, I uphold this complaint and direct the Provider to pay a sum of €8,000 in compensation to the Complainant for the inconvenience caused and clear any negative reference relating to this matter with both the Irish Credit Bureau and the Central Credit Register. Furthermore, I direct that the Provider issue a letter to the Complainant clarifying the circumstances of its reporting of this account to the credit agencies. This letter must contain words to the effect that *"The conduct of [the Provider] in failing to correctly process [the Complainant's] payment instructions contributed to the default on this account"*, such that the Complainant can show it to any third party she sees fit.

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**Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2) (f) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €8,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

I also direct the Provider to clear any negative reference relating to this matter with both the Irish Credit Bureau and the Central Credit Register. Furthermore, I direct that the Provider issue a letter to the Complainant clarifying the circumstances of its reporting of this account to the credit agencies. This letter must contain words to the effect that "*The conduct of [the Provider] in failing to correctly process [the Complainant's] payment instructions contributed to the default on this account*", such that the Complainant can show it to any third party she sees fit.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**



**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

1 July 2020

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,  
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

